

United States ¹²
Circuit Court of Appeals
For the Ninth Circuit.

PAUL FALL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

UPON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF MONTANA.

FILED

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PAUL P. O'BRIEN,
CLERK

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
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W. N. WAUGH, Esq., of Butte, Montana,
JOHN A. SHELTON, Esq., of Butte, Montana,
Attorneys for Appellant and Defendant.

WELLINGTON D. RANKIN, Esq., U. S. District
Attorney of Helena, Montana,
Attorney for Appellee and Plaintiff.

In the District Court of the United States in and
for the District of Montana.

No. 2071.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

PAUL FALL,
Defendant.

BE IT REMEMBERED, that on the 26th day of
November, 1928, an information was filed herein,
which information is in the words and figures as
follows, to wit: [1*]

*Page-number appearing at the foot of page of original certified
Transcript of Record.

District Court of the United States, District of
Montana, Butte Division.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

PAUL FALL,
Defendant.

INFORMATION.

BE IT REMEMBERED, that L. V. Ketter, Assistant United States Attorney for the District of Montana, on behalf of the United States, comes into the District Court of the United States for the District of Montana, and informs the Court on this — day of November, 1928:

FIRST COUNT (SALE).

That on or about the 22d day of September 1928, one Paul Fall, whose true name is to the informant *unknow*, at *and* that certain ranch occupied by the defendant located about five miles west from the town of Silver Bow in the county of Silver Bow, in the State and District of Montana, and within the jurisdiction of this Court did *and* then and there wrongfully and unlawfully sell intoxicating liquor, to wit, whiskey, the exact quantity and character of which are to the informant unknown, without then and there first obtaining a permit from the Commissioner of Internal Revenue so to do; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SECOND COUNT (MANUFACTURE).

And the informant aforesaid further gives the Court to *understand be* informed:

That on or about the 25th day of October, 1928, one Paul Fall, whose true name is to the informant unknown, at and upon those certain premises described in Count One hereof, did then and there wrongfully and unlawfully manufacture intoxicating [2] liquor, to wit, whiskey, the exact quantity and character of which are to the informant unknown, without then and there first obtaining a permit from the Commissioner of Internal Revenue so to do; contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

THIRD COUNT (POSSESSION PROPERTY).

And the informant aforesaid further gives the Court to understand and be informed:

That on or about the 25th day or October, 1928, one Paul Fall, whose true name is to the informant unknown, at and within those certain premises described in count One hereof, did then and there wrongfully and unlawfully have and possess property designed for the manufacture of intoxicating liquor, intended for use in violation of Title II of the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

FOURTH COUNT (POSSESSION LIQUOR).

And the informant aforesaid further gives the Court to understand and be informed:

That on or about the 25th day of October, 1928, one Paul Fall, whose true name is to the informant unknown, at and within those certain premises described in Count One hereof, did then and there wrongfully and unlawfully have and possess intoxicating liquor, to wit, whiskey, the exact quantity and character of which are to the informant unknown, intended for use in violation of the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

FIFTH COUNT (NUISANCE).

And the informant aforesaid further gives the Court to understand and be informed:

That on or about the 25th day of October, 1928, one Paul Fall, whose true name is to the informant unknown, at and within those certain premises described in Count One hereof, did then and there wrongfully and unlawfully maintain a common nuisance, that is to [3] say, a place where intoxicating liquor was sold, manufactured, possessed and kept in violation of Title II of the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

(Signed) L. V. KETTER,

Assistant United States Attorney for the District
of Montana.

L. V. Ketter, being first duly sworn, on oath, deposes and says:

That he is a duly appointed, qualified, and acting Assistant United States Attorney for the District of Montana, and as such makes this verification to the foregoing information; that he has read the said information and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

(Signed) L. V. KETTER.

Subscribed and sworn to before me this 26th day of November, 1928.

(Signed) C. R. GARLOW,
Clerk, U. S. District Court, District of Montana.

Filed Nov. 26, 1928. [4]

THEREAFTER, on November 26th, 1928, judgment was duly entered herein, in the words and figures as follows, to wit: [5]

United States District Court, District of Montana.

No. 2071.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PAUL FALL,

Defendant.

JUDGMENT.

Defendant present with his attorney, W. N. Waugh, Esq., and the District Attorney appearing for the United States.

Thereupon defendant waived the reading of the information and entered a plea of not guilty. Thereupon, by agreement of respective parties, trial by jury was waived and the cause was tried to the Court without a jury. Thereupon defendant presented his motion to suppress evidence, etc.

Thereupon F. S. Chase, J. J. Maloney and Ben Holter were sworn and examined as witnesses for the United States, whereupon plaintiff rested.

Thereupon L. M. Van Etten, Paul Fall and Mrs. Paul Fall were sworn and examined as witnesses for defendant, whereupon defendant rested.

Thereupon J. J. Maloney was recalled in rebuttal, whereupon the evidence closed and the cause was submitted to the Court.

Thereupon, after due consideration, Court **ORDERED** that the defendant's motion to quash the search-warrant and suppress the evidence herein be denied.

Thereupon, after due consideration, Court finds the defendant guilty as charged in the information herein and **ORDERED** that a verdict of guilty as charged be, and hereby is, entered accordingly.

Whereupon Court rendered its judgment as follows, to wit:

That whereas the said defendant having been

duly convicted in this court of the offense of unlawfully, and wrongfully selling, manufacturing and possessing intoxicating liquor, possessing property designed for the manufacture thereof, and maintaining a common nuisance, in violation of the National Prohibition Act, committed on or about September 22, 1928, and October 25, 1928, respectively, near Butte, in the state and District of Montana, as charged in the information herein;

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED that for said offenses, you, the said Paul Fall, be confined and imprisoned in the Silver Bow County Jail at Butte, Montana, for the term of FOUR MONTHS on Counts One and Two of the Information herein, and that you be confined and imprisoned in said county jail for the term of FOUR MONTHS on Count Five of said Information, said terms of imprisonment to run consecutively, and that you pay a fine of TWO HUNDRED AND FIFTY DOLLARS on Counts Three and Four of said Information, and be confined in said county jail until said fine is paid or you are otherwise discharged according to law.

Entered in open court December 28th, 1928.

C. R. GARLOW,

Clerk. [6]

THEREAFTER, on January 28th, 1929, assignment of errors was duly filed herein in the words and figures as follows, to wit: [7]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Comes now Paul Fall, the defendant in the above-entitled action, and hereby makes his assignment of errors upon which he will rely, as follows, to wit:

First. The Court erred in denying the motion of the defendant to quash the search-warrant, which motion was filed herein December 27, 1928.

Second. The Court erred in denying the motion of the defendant to suppress certain evidence, which said motion was filed herein December 27, 1928.

Third. The Court erred in overruling the objection of the defendant and admitting the evidence and testimony of Ben Holter.

Fourth. The Court erred in overruling the objection of the plaintiff to the testimony of Ben Holter as follows, to wit:

“I was out at his place the other side of Silver Bow junction and assisted in a search thereof on the 25th day of October, 1928 with prohibition agents, H. Donald Dribble, and F. S. Chase.”

Fifth. The Court erred in overruling the objection of the defendant and permitting the witness Ben Holter to testify as follows, to wit:

“We first searched the house, a one-room frame, and we found some whiskey in there and took samples of it.”

Sixth. The Court erred in overruling the objec-

tion of the defendant and in permitting the witness, Ben Holter, to testify as follows, to wit:

“There was only a small quantity in the keg.”

Seventh. The Court erred in overruling the objection of [8] defendant and in permitting the said Ben Holter to testify as follows, to wit:

“We then searched the dugout, some little distance from the house and found there two stills set up complete. One a forty-five gallon, and one a sixty gallon; about six hundred gallons of mash, two three hundred gallon vats, and some kegs, burners, and pressure tanks complete and about thirteen gallons of moonshine whiskey.”

Eighth. The Court erred in holding and deciding that evidence procured under the search-warrant above referred to was legally procured.

Ninth. The Court erred in finding the defendant guilty under the first count of the Information herein and in pronouncing sentence upon him under the said count.

Tenth. The Court erred in finding the defendant guilty under the second count of the Information herein and in pronouncing sentence against him upon the second count.

Eleventh. The Court erred in finding the defendant guilty under the third count of the Information herein and in pronouncing sentence against him upon said count.

Twelfth. The Court erred in finding the defendant guilty under the fourth count of the Informa-

tion herein and in pronouncing sentence against him upon said count.

Thirteenth. The Court erred in finding the defendant guilty under the fifth count of the Information herein and in pronouncing sentence against him on said count.

Fourteenth. The Court erred in holding and deciding that the search of defendant's residence, dwelling-house and curtelege was legal.

Fifteenth. The Court erred in holding and deciding that application for search-warrant herein was not defective.

Sixteenth. The Court erred in holding and deciding that the affidavit in support of application for search-warrant was not defective.

Seventeenth. The Court erred in holding and deciding that the complaint and application for search-warrant and affidavit for search-warrant was not defective. [9]

Eighteenth. The Court erred in holding and deciding that the search-warrant introduced in evidence herein was in due form of law and was not defective.

Nineteenth. The Court erred in holding and deciding that there was sufficient showing of probable cause to warrant the issuance of the search-warrant.

Twentieth. The Court erred in giving and rendering judgment herein against the defendant.

WHEREFORE, the defendant, Paul Fall, prays

that the said judgment of the said United States District Court be reversed.

W. N. WAUGH,
Attorney for the Above-named Defendant.

Service of the above and foregoing assignment of errors and prayer for reversal admitted, and copy received this 22d day of January, 1929.

WELLINGTON D. RANKIN,
By R. S.,
United States District Attorney.

Filed Jan. 28, 1928. [10]

THEREAFTER, on January 28th, 1929, notice of appeal was duly filed herein, in the words and figures as follows, to wit: [11]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To the Plaintiff Herein and to WELLINGTON D. RANKIN, Esq., Its Attorney:

You and each of you will please take notice that the defendant herein has appealed and does hereby appeal to the United States Circuit Court of Appeals for the Ninth District, from that certain judgment made and entered in the above-entitled case in the above-entitled court on the 28th day of December, 1928, in favor of the plaintiff and against the defendant.

The defendant appeals from the whole and the

said judgment and from each and every part thereof.

W. N. WAUGH,
Attorney for Defendant.

Due service of the above and foregoing notice admitted this 22d day of January, 1929.

WELLINGTON D. RANKIN,

By R. S.,
Attorney for Plaintiff.

Filed Jan. 28, 1929. [12]

THEREAFTER, on January 29th, 1929, bond on appeal was duly filed herein, in the words and figures as follows, to wit: [13]

[Title of Court and Cause.]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, that we, Paul Fall, as principal, and J. Fred Miles and Andrew Thompson, as sureties, of the county of Silver Bow, State of Montana, are held and firmly bound unto the United States of America in the sum of \$1,500, lawful money of the United States of America, to be paid to the said United States, and for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally, firmly by these presents.

Signed with our hands and dated this 21st day of January, 1929.

WHEREAS, the above-named Paul Fall has filed herein an assignment of errors and has served and filed herein a notice of appeal whereby he has appealed from the above-entitled court, to the United States Circuit Court of Appeals for the Ninth Circuit, from that certain judgment made and entered in the above-entitled court and the above-entitled cause, on the 28th day of December, 1928, in favor of the plaintiff and against the defendant,—

NOW, THEREFORE, the condition of this obligation is such that if the above-named Paul Fall shall prosecute the said appeal to effect and answer all damages and costs if he fails to make his said plea good, and if the said Paul Fall shall pay the fine imposed by said judgment and shall appear and surrender himself in execution of the judgment above mentioned upon its being affirmed or modified or upon the said appeal being dismissed, then this obligation shall be void, but otherwise the same shall be and remain in full force [14] and effect.

PAUL FALL,

Principal.

L. FRED MILES,

ANDREW THOMPSON,

Sureties.

State of Montana,

County of Silver Bow,—ss.

On this 21st day of January, 1929, personally appeared before me, a notary public in and for the State of Montana, J. Fred Miles, known to me

to be one of the persons whose name is subscribed to the above, and foregoing instrument, and the said J. Fred Miles being duly sworn, deposes and says that he is a resident and householder, or freeholder of the county of Silver Bow, State of Montana, and is worth the amount named in the foregoing bond, as the penalty thereof over and above his just debts and liabilities and exclusive of the property by law exempt from execution and that his said property consists of the following particularly described property, to wit:

The southwest one-quarter of section twenty-two, township three north, range nine west, Montana Meridian, Silver Bow County, Montana; also a half interest in the estate of T. O. Miles, deceased, not probating in this county. Unincumbered.

He acknowledged that he executed the said bond freely and voluntarily, and for the uses and purposes therein set forth.

L. FRED MILES.

Subscribed and sworn to before me this 21st day of January, 1929.

[Seal] W. N. WAUGH,
Notary Public in and for the State of Montana,
Residing at Butte, Montana.

My commission expires Oct. 6, 1930.

State of Montana,
County of Silver Bow,—ss.

On this 21st day of January, 1929, personally appeared before me, a notary public in and for the State of Montana, Andrew Thompson, known to

me to be one of the persons whose name is subscribed to the above and foregoing instrument, and the said Andrew Thompson being [15] duly sworn, deposes and says that he is a resident and householder, or freeholder of the county of Silver Bow, State of Montana, and is worth the amount named in the foregoing bond as the penalty thereof over and above his just debts and liabilities and exclusive of the property by law exempt from execution, and that his said property consists of the following particularly described property to wit:

Beginning at the N. W. corner of the tract herein described from which the north quarter corner of section 24, Tp. 3 N., R. 9 west, bears north $63^{\circ} 10'$ west, 87.7 feet, then south $77^{\circ} 17'$ east 150 feet, then south $12^{\circ} 43'$ west 150 feet, more or less to the N. P. Ry. Company's right of way, thence north $77^{\circ} 17'$ west along said right of way 150 feet, thence north $12^{\circ} 43'$ east 150 feet to the place of beginning, containing $51/100$ acres, more or less, improvements and store building thereon.

He acknowledged that he executed the said bond freely and voluntarily and for the uses and purposes therein set forth.

ANDREW THOMPSON,

Subscribed and sworn to before me this 21st day of January, 1929.

[Seal]

W. N. WAUGH,

Notary Public in and for the State of Montana,
Residing at Butte, Montana.

My commission expires Oct. 6, 1930.

The above-named bond approved this 29th day of Jan., 1929.

BOURQUIN,
Judge.

Filed Jan. 29, 1929. [16]

THEREAFTER, on January 29th, 1929, citation on appeal was duly issued and filed herein, being in the words and figures as follows, to wit. [17]

CITATION ON APPEAL.

The United States of America to the United States of America, GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, thirty days from and after the day of this citation bears date, pursuant to a notice of appeal filed and served on the United States of America, and filed in the office of the Clerk of the District Court of the United States, in and for the District of Montana at Butte, Montana, on the 28th day of January, 1929, and then and there to show cause, if any there be, why the judgment rendered against Paul Fall, defendant in the case pending in said court entitled United States of America, Plaintiff, vs. Paul Fall, Defendant, as in said notice of appeal is mentioned should not be reversed and corrected, and why speedy justice *should be* done the parties in that behalf.

Dated this 29 day of January, 1929.

BOURQUIN,
Judge of the United States District Court, for the
District of Montana.

Stay of execution for 30 days only, provided if
the record on appeal be filed in the C. C. A. by
said time, stay till appeal determined.

BOURQUIN, J. [18]

Due service of within citation, and receipt of
copy hereof, is hereby admitted this January 29,
1929.

WELLINGTON D. RANKIN,
United States Attorney for Montana.

Filed Jan. 29, 1929. [19]

THEREAFTER, on February 5th, 1929, defend-
ant's bill of exception was duly filed herein, being
in the words and figures as follows, to wit: [20]

[Title of Court and Cause.]

DEFENDANT'S BILL OF EXCEPTIONS.

BE IT REMEMBERED That in the above-
entitled action an information was filed herein on
the twenty-sixth day of November, 1928, charging
the defendant severally upon five counts, with the
sale of intoxicating liquor, the manufacture of in-
toxicating liquor, possession of property designed
for that purpose, possesssion of liquor, and the
maintenance of a nuisance; that a bench warrant
immediately issued herein, and that thereafter the

defendant was placed under arrest; that thereupon the defendant furnished and filed a bail bond, which said bond was by the Court made returnable December 28, 1928, at 9:30 o'clock A. M., at which time the defendant was ordered to appear for arraignment, plea, and trial; that thereafter, and on the 27th day of December, 1928, the defendant filed herein his motion to quash search-warrant and to suppress certain evidence, which said motion is in words and figures as follows, to wit: [21]

[Title of Court and Cause.]

MOTION TO QUASH SEARCH-WARRANT,
SUPPRESS EVIDENCE, ETC.

Comes now the above-named defendant, Paul Fall, by his attorney, W. N. Waugh, Esquire, before arraignment, plea or trial, and respectfully moves this Honorable Court for an order vacating and quashing the search-warrant herein issued by L. M. VanEtten, United States Commissioner of the District of Montana, bearing date October 25th, 1928, which directed a search of the premises therein and not otherwise described as "a ranch with small building used for residence located about five miles in a westerly direction from the town of Silver Bow, Montana," under color of which, on October 25th, 1928, three Federal Prohibition Officers or Agents, namely: Donald Dibble, Ben Holter and John Doe (a more particular designation of said officers, their respective true names,

and their respective official capacities, being to this defendant unknown), entered into and upon this defendant's private dwelling which was then used and for many *month* immediately preceeding said time had been used and occupied by himself and wife as such, exclusively, and not for any business purpose whatsoever, and the curtelege thereof, situated and located on defendant's ranch described as follows, to wit:

The S. W. Quarter of the N. E. Quarter and the S. E. Quarter of the N. E. Quarter, Section Thirty (30) Township Three (3) North, Range Nine (9) West, Silver Bow county, Montana. and then and there without his consent and against his wish and will unlawfully searched said dwelling and then and there and therein unlawfully destroyed certain of defendant's personal property, and then and there and therein seized and therefrom removed certain other of his personal property, to wit: approximately two pints of whiskey and the containers thereof, and continuing said search to a certain dugout [22] adjoining said dwelling, and upon the curtelege thereof, and on said premises, and then and there and therein unlawfully destroyed certain personal property of this defendant, and then and there and therein wrongfully seized and took therefrom certain other personal property of this defendant, to wit: The copper heads of two stills; all of which said personal property so unlawfully seized and unlawfully taken by said officers, as aforesaid, was the personal property of this defendant, a citizen of the

United States of America; and said officers thereupon and thereafter, as affiant is informed and believes, delivered all of such seized property to the United States District Attorney for the District of Montana, and he, said District Attorney, intends to use the same against this defendant as evidence in this cause and otherwise, contrary to the provisions of the Constitution of the United States of America, and the Fourth and Fifth Amendments thereto, the Constitution of the State of Montana and Amendments thereto, and the laws of the United States of America and the State of Montana, and the constitutional rights of this defendant; also for an order directing all officers of this court possessing any of such property, to forthwith return the same and all thereof to this defendant, and restraining and enjoining said U. S. District Attorney, and the Federal Prohibition Commissioner of this District, each and both of them, each and all subordinates of either or both of them, from using in any manner or at all any and all of such property and any and all information gained or secured and things discovered as a result of said search and seizure; and for an order suppressing all of such evidence; all for the following reasons, to wit:

That in the proceedings for the issuance of the alleged and pretended search-warrant herein there was no probable cause made to appear to the issuing Commissioner, nor any competent evidence presented to him upon which a finding of probable cause could be predicated. [23]

That the alleged and pretended search-warrant herein was improvidently and unlawfully and improperly issued, solely and not otherwise, upon an application, so called, of one Ben Holter, and a pretended affidavit of one James J. Maloney, as affirmatively appears by the files and records of this court in this cause, and of the said issuing Commissioner's office herein, reference to which is hereby made and had, neither of which, separately or together, contain any showing whatsoever sufficient to warrant a finding of probable cause or the issuance of said search-warrant, particularly in this, to wit:

ONE. (a) Holter's so-called complaint and application for search-warrant, sworn to before the issuing Commissioner on the 25th of October, 1928, is wholly defective and insufficient in that it fails to particularly or otherwise describe the place to be searched.

(b) That said complaint and application is wholly unsupported by any competent affidavit particularly or otherwise describing the place to be searched.

(c) That said so-called complaint and application sets forth no facts other than mere conclusions of the subscriber that tend to establish, or do establish, the alleged conditions which induced, if they do, the said complaint to conclude and believe that any violation of law had been committed.

TWO. (a) That the pretended supporting affidavit of James J. Maloney, adverted to in Holter's said so-called complaint and application, is

not competent evidence for any purpose connected with this application, or otherwise, for the reason that it was neither subscribed or sworn to in the presence of or before the issuing Commissioner, and is mere hearsay.

(b) That said supporting affidavit is further insufficient and deficient in that it fails to particularly or [24] *or* otherwise describe the place to be searched.

(c) That said supporting affidavit, so called, is further particularly defective and insufficient for the reason that the averment thereof to the effect that affiant had purchased intoxicating liquor of this defendant on September 22d, 1928, thirty-two days prior to the issuance of said search-warrant, is too remote to establish, or tend to establish, probable cause, or for any purpose whatsoever herein.

(d) That said supporting affidavit, so called, is further particularly defective and insufficient for any purpose whatsoever for the reason that the averment thereof that affiant purchased of this defendant, on or about September 22d, 1928, at said place, a pint of moonshine whiskey, for which affiant paid defendant Five Dollars, is untrue.

THREE. That the alleged and pretended search-warrant is not in due form of law, for the following reasons, to wit:

That it does not conform to the provisions and requirements of Title XI, Section 6, 40 Stat. 229, Laws of the United States of America, Act of Con-

gress June 15th, 1917, nor of any other statute regulating the issuance and contents of search-warrants, in this,—

(a) No particular or other grounds or probable or other cause for its issue are stated therein;

(b) No name of any person whose affidavit was taken in support thereof by the issuing Commissioner is therein stated;

(c) The place to be searched is insufficiently, inadequately and not at all described therein.

This motion will be based upon the files and records of this court and cause, the record of said issuing commissioner, and supported by oral testimony.

W. N. WAUGH,

Attorney for Said Defendant. [25]

United States of America,
The State of Montana,
County of Silver Bow,—ss.

Paul Fall, being first duly sworn, on his oath deposes and says: I am the defendant named and mentioned in the above and foregoing and within motion to quash search-warrant, suppress evidence, etc.; I have read the said pleading, know all of its contents, and the whole thereof is true.

PAUL FALL,

Subscribed and sworn to before me, this 27th day of December, A. D. 1928.

[Notarial Seal]

W. N. WAUGH,

Notary Public for the State of Montana, Residing at Butte, Silver Bow County, Montana.

My commission expires October 6th, A. D. 1930.

Service of the within and foregoing motion to quash search-warrant, suppress evidence, etc., admitted and copy thereof received, this 27th day of December, A. D., 1928.

HOWARD A. JOHNSON,

Asst. U. S. Attorney.

Filed December 28, 1928. [26]

And on the said 27th day of December, 1928, the defendant filed herein a notice that the said motion would be for hearing in the courtroom of the said court at 9:30 o'clock A. M., on the 28th day of December, 1928, which said notice was duly served upon plaintiff.

That on the 28th day of December, 1928, at 9:30 o'clock A. M. the said motion was called to the attention of the Court.

Upon the calling of this case for trial, counsel for defendant informed the Court that he had theretofore served and filed a written motion to quash the search-warrant and to suppress certain evidence. The Court then stated that the motion would be taken up and heard at the same time, and in the course of the trial that if the evidence was found to be incompetent, defendant would be given the benefit thereof, and such evidence would be suppressed. Thereupon, counsel for defendant asked that it be understood that all such evidence introduced would go in subject to said motion and objection, and it was so agreed and understood.

Said case came on for trial on the 28th day of December, 1928, before the Honorable George M. Bourquin, Judge of the said court, a jury being

expressly waived by the defendant. Wellington D. Rankin, United States District Attorney for the District of Montana, appeared for the plaintiff, and William N. Waugh appeared as counsel for the defendant. The defendant was present in person.

Whereupon, subject to the said motion to quash search-warrant and to suppress certain evidence, the plaintiff produced certain witnesses, the defendant produced certain witnesses, and the plaintiff produced certain witnesses in rebuttal, which said witnesses were duly sworn and testified and gave certain testimony. [27]

That during said trial and on the 28th day of December, 1928, the following testimony was taken and proceedings had to wit:

TESTIMONY OF F. S. CHASE, FOR PLAINTIFF.

F. S. CHASE, called as witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination by WELLINGTON D.
RANKIN.

My name is F. S. Chase. I am a federal prohibition agent for this district. On September 22d, 1928, I went out to a ranch southwest of Butte with Agent Maloney, and we bargained with the defendant, Paul Fall, for forty gallons of moonshine whiskey at \$5.50 a gallon, gave him a deposit of \$5.00 down on the same, and took a sample of a pint thereof. Agent Maloney was with me in the whole transaction.

(Testimony of F. S. Chase.)

Cross-examination by W. N. WAUGH.

I was with Agent Maloney when he made an affidavit for a search-warrant based upon the transaction that I have related in my direct examination. I have examined the affidavit for search-warrant which you show me, the same being on file and of record in this case No. 2021, entitled United States of America, Plaintiff, vs. Paul Fall, Defendant. I did not make the affidavit, but I was with Agent James J. Maloney when he made the same before United States Commissioner Brass, at Helena, Montana, on the date mentioned therein. It states the facts, and I know nothing further of the search-warrant proceedings.

TESTIMONY OF JAMES J. MALONEY, FOR
PLAINTIFF.

JAMES J. MALONEY, called as witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination by WELLINGTON D.
RANKIN.

My name is James J. Maloney, and I am a Federal Prohibition Agent for this District. On the 22d day of September, 1928, Agent Chase and myself went out to a ranch southwest of Butte in the hills beyond Silver Bow Junction. We asked the defendant Fall [28] if he could sell us some whiskey, and he said he could let us have thirty-five

(Testimony of James J. Maloney.)

or forty gallons. We bargained for forty gallons at \$5.50 a gallon. Fall said that it was customary for persons to show good faith by making a deposit of \$5.00 or \$10.00, so we gave him a deposit of \$5.00 on the whiskey, and he gave us a pint bottle as a sample. Just previous thereto he had given us each a drink of the whiskey in his house. This transaction took place in front of his house and in the house on the ranch. He told us that he did not have the whiskey there and that he would have to get it from the cashe and for us to come back the next day. We told him we would. I never went back, but I wrote him from Dillon.

Cross-examination by W. N. WAUGH.

The transaction I have related took place just in front of and in the house of defendant, Fall. His wife was in the house and she heard some of the conversation between us. I made the affidavit for a search-warrant which you show me and which is on file and of record in this case No. 2021. It was made by me before United States Commissioner Brass at Helena, Montana. It states that I visited the place and purchased of Paul Fall a pint of moonshine whiskey, for which the sum of \$5.00 was paid. It states the truth. When we were at the Fall place we bargained for forty gallons of moonshine whiskey and we had two drinks, Chase and myself one each, in the residence, at the time, given to us by Fall. The \$5.00 was a deposit on the forty gallons. I did not go back afterwards.

(Testimony of Ben Holter.)

I think the affidavit was mailed either to Commissioner Van Etten or to Agent Ben Holter. I did not appear before him personally.

TESTIMONY OF BEN HOLTER, FOR PLAINTIFF.

BEN HOLTER, called as witness on behalf of the plaintiff, having been first duly sworn, testified as follows: [29]

Direct Examination by WELLINGTON D.
RANKIN.

My name is Ben Holter, and I am a Federal Prohibition Officer and I know this defendant. I was out at his place the other side of Silver Bow junction and assisted in a search thereof on the 25th day of October, 1928, with Prohibition Agents H. Donald Dribble and F. S. Chase. We first searched the house, a one-room frame, and we found some whiskey in there and took samples of it. There was only a small quantity in a keg. We then searched the dugout, some little distance from the house and found there two stills set up complete. One a forty-five gallon, and one a sixty gallon; about six hundred gallons of mash, two three hundred gallon vats, some kegs, burners, and pressure tanks complete, and about thirteen gallons of moonshine whiskey.

Cross-examination by W. N. WAUGH.

We had a search-warrant and this search was

(Testimony of Ben Holter.)

made by virtue thereof. The warrant which you show me, as one of the files in this case, is the warrant. I made the application that you show me for this warrant, the same being designated complaint and application for search-warrant and a file in this case. The affidavit for search-warrant which you show me, which is also filed in this case, was the supporting affidavit of James J. Maloney made on the 27th day of September, 1928, with my application for a search-warrant. This proceeding was had before the United States Commissioner Van Etten here in Butte on the 25th day of October, 1928. I do not know now whether Maloney's affidavit was mailed direct to Van Etten or whether I brought it there when I filed my application. Maloney was not personally before the commissioner.

(By the COURT.)

Q. About how far from the house did you find this whiskey?

A. About three hundred yards. [30]

Plaintiff rests.

TESTIMONY OF L. M. VAN ETTEN, FOR DEFENDANT.

L. M. VAN ETTEN, called as witness on behalf of the defendant, having been first duly sworn testified as follows:

My name is L. M. Van Etten. I am a United States Commissioner for this District, and I issued the search-warrant which you show me, dated the 25th day of October, 1928, directing a search of

(Testimony of L. M. Van Etten.)
premises, described as "A ranch with a small building used for residence, located about five miles in a Westerly direction from the town of Silver Bow, Silver Bow County, Montana," and I caused the said warrant and the record proceedings therefor to be filed with the Clerk of this court in this cause upon return of said warrant to me. The affidavit for search-warrant of James J. Maloney, sworn to before Commissioner Brass, at Helena, Montana, on the 27th day of September, 1928, and the complaint and application for search-warrant sworn to and presented to me on the 25th day of October, 1928, by Agent Ben Holter, constituted all of the evidence which was presented to me upon said application for a search-warrant and was all the evidence that I had upon which to base my finding of probable cause.

Said James J. Maloney did not appear before me personally and I neither swore him nor took his affidavit or deposition myself.

TESTIMONY OF PAUL FALL, ON HIS OWN BEHALF.

PAUL FALL, being called as a witness on his own behalf and being first duly sworn, testified as follows:

My name is Paul Fall. I am a rancher, and I live on a ranch near Silver Bow junction, in Silver Bow County, Montana, and I have lived there for the last past fifteen years. My wife and family live with me in my residence, located on said ranch

(Testimony of Paul Fall.)

and we have a small dwelling-house and other buildings and enclosures all located on the southwest quarter of the northeast quarter and the southeast [31] quarter of the northeast quarter of section 30 in township 3 north, of range 9 west, in Silver Bow County, Montana. My said residence and dwelling-house, enclosures, and the outbuildings and curtelege thereof, are situated on a small portion of these two forties. My residence and the curtelege thereof and a dugout thereon was searched by Federal Prohibition Officers on the 25th day of October, 1928 upon a search-warrant. The search-warrant that you show me, being a part of the files of this case, No. 2021, is the search-warrant, and I was served with a copy of it just before the search was made. There were three federal officers who made the search. Officer Ben Holter, and two whose names I do not know, but I think one was Agent Dribble, first searched my dwelling-house. They ransacked everything in the house and seized, and took away with them a couple pints of whiskey; they then searched the dugout on the premises, seized and took with them the copper heads of two stills. The search was without my consent and against my will. The premises referred to are all mine, and were occupied by myself and family as our residence at the time of the search, and the property that they took with them and siezed was my property and then in my possession. I am informed that they delivered this property to the

(Testimony of Paul Fall.)

United States District Attorney for use against me in this case.

Before the search was made, and on the 26th day of September, 1928, I was at work about a half mile from the ranch and a car drove up and stopped some distance away. A man came over to me from the car, Agent Maloney here, and asked me if I would sell him some whiskey. I asked him who told him that I had any whiskey for sale. I told him I had no whiskey for sale, and he then said that his partner in the car was very sick and wanted to know if I wouldn't get some whiskey for him. I told him I had no whiskey for sale, but under those circumstances, that if he would come down to my house, I would give them a drink. It was about quitting time, so [32] I unhooked my team and drove them down to the house. This man preceded me to the house in the car with the other man. When I got to the house the three of us entered. It is a small one-room house, formerly a garage. I went to the corner of the room and gave the two men one drink each out of a small bottle, about a pint of whiskey. When they had drunk the whiskey, one of them said, "That is pretty good whiskey; can we buy some of it?" I asked them how much they wanted to buy, and they said they would take a lot—thirty-five or forty gallons, if they could get it, and they asked how much it would cost. I told them, I did not know, but I thought I could get it for them, and that if I could get it for them, it would probably cost \$5.50 a

(Testimony of Paul Fall.)

gallon. That I was not sure about it, but I would find out the next day, and let them know when they came back; they said all right they would come back the next day and find out; I should let them know then. Just before they left the house one of them wanted to know if they could not get a small bottle then. I told them that the bottle that I gave them to drink out of was all the whiskey I had. It was. They said something about this man being very sick, and I said, "Well, that is all I have, but if that is of any use to you, you can have it." There was absolutely nothing said about money for this pint of whiskey. I did not sell it to them, but gave it to them as a guest in my house on his statement that I have related. I never sold them or anyone else any whiskey on or about the times mentioned. One of them put this pint bottle in his pocket and the three of us went out of the house. My wife was there within five or six feet from us during all the time we were in the house, and she could hear and did hear the conversation and all of it. We were not there over five or six minutes. I went with them as far as their car, a few yards [33] from the house, and when I returned my wife handed me a \$5.00 bill and told me that one of these men must have let it there at the time. She stated that she found it on the washstand close to the rim of the wash-bowl, where I had given them the drink of whiskey. I never saw this \$5.00 bill before. I did not see it placed there or left there, and I did not know it was left there.

(Testimony of Paul Fall.)

Cross-examination by WELLINGTON D. RANKIN.

I did not sell Agent Maloney or Chase or either of them any whiskey on the 22d day of September, 1928, or at any other time. I gave them a drink each in my house, while they were there at my invitation, but I never sold them anything. One of the men appeared to be sick, and he complained of being sick. I told these men I would find out if I could get them thirty-five or forty gallons of whiskey, and that they were to come back the next day and I would let them know. No, I did not make this whiskey.

TESTIMONY OF MRS. PAUL FALL, FOR DEFENDANT.

Mrs. PAUL FALL, being first duly sworn, testified as witness on behalf of the defendant as follows, to wit:

Direct Examination by W. N. WAUGH.

My name is Mrs. Paul Fall, and I am the wife of the defendant, Paul Fall, and I live on his ranch and in the dwelling-house he described in his testimony. I have lived there with him about fifteen years. We homesteaded the place. I was in our dwelling-house there on the 22d day of September, 1928, when my husband brought in a couple of strange men. He took them to the corner of the room to a small table or washstand and poured

(Testimony of Mrs. Paul Fall.)

each of them out a drink of whiskey from a small bottle he had there. There was some ordinary conversation and after they drank the whiskey one of them remarked that it was very good, and wondered if they could get some of it. My husband asked them how much they wanted to get, and they told him [34] that they wanted forty gallons, and they asked how much it would cost them. My husband told them that he thought it would cost them \$5.50 a gallon and he would inquire if he could get any for them, and let them know later on, if they would come back the next day. That was about all that was said at that time, and they started to leave the house. Just before leaving, one of them asked my husband if they could not get a pint then, and my husband told them that all he had was what was left in the bottle that they had drunk from. One of the two said that one of them was very sick. I am not sure which one it was, and that they wanted this for him on that account of his being sick. One of them did actually look sick. My husband further said they could have what was left in the bottle in that case and one of them took it and all three left the house. I would say that they were not there more than five or ten minutes. My husband went out to the car with them and returned almost immediately. When they left, I had occasion to go into the corner where they drank, and I discovered that someone had left a \$5.00 bill on the washstand and partly concealed by the wash basin. I did not see it left there, so I do not

(Testimony of Mrs. Paul Fall.)

know who did leave it there. I picked it up, and when my husband came back I handed it to him. He was just as surprised as I was. My husband did not charge them for the drinks that he gave them, nor for the bottle that they got from him, and I heard no mention of money whatever in the whole conversation, except the price of \$5.50 a gallon which my husband said he thought the whiskey would cost them which they desired to buy, if he could get it at all for them. There was no whiskey sold to these men or to anyone else that I know of.

Cross-examination by WELLINGTON D. RANKIN.

Q. Mrs. Fall, you know your husband had stills there, did you not?

Mr. WAUGH.—Objected to as improper examination.

By the COURT.—Sustained.

Mr. RANKIN.—No further cross-examination.

[35]

Defendant rests.

TESTIMONY OF JAMES J. MALONEY, FOR
PLAINTIFF (RECALLED IN REBUT-
TAL).

JAMES J. MALONEY, a witness for plaintiff, was recalled in rebuttal and testified as follows, to wit:

(Testimony of James J. Maloney.)

Direct Examination by WELLINGTON D. RAN-
KIN.

I have heard the references made by the defendant and his witness with regard to someone being sick. There was nothing said to Mr. Fall or to anyone while we were at his ranch about anyone being sick. No one was sick. He did not give us the whiskey; we bargained for forty gallons and we paid him \$5.00 as a deposit thereon, as he stated at the time that we should show some good faith by a deposit of \$5.00 or \$10.00; so we gave him \$5.00.

Cross-examination by W. N. WAUGH.

Neither Agent Chase or myself was sick at the time. Chase had no boil on his neck and there was absolutely nothing said about either of us being sick.

TESTIMONY OF F. S. CHASE, FOR PLAINTIFF (RECALLED IN REBUTTAL).

F. S. CHASE was recalled as a witness upon rebuttal on part of the plaintiff, and testified as follows, to wit:

Direct Examination by WELLINGTON D. RAN-
KIN.

There was absolutely nothing said at the time about anyone being sick.

Cross-examination by W. N. WAUGH.

I did not have a boil on my neck at that time, and

I was not sick, and Agent Maloney, who was with me, was not sick, and there was no such representation made.

The complaint and application for search-warrant, and affidavit for search-warrant, and search-warrant referred to in the testimony of F. S. Chase and Ben Holter, hereinabove, were filed herein on the 14th day of November, 1928, and are in words and figures as follows, to wit: [36]

Before L. M. VAN ETTEN, United States Commissioner for the District of Montana.

United States of America,
District of Montana,—ss.

COMPLAINT AND APPLICATION FOR SEARCH-WARRANT.

Ben Holter, being first duly sworn on oath, deposes and says that he is a Federal Prohibition Agent, that he makes this complaint and affidavit for the purpose of procuring a search-warrant, authorizing the search of the premises herein described, that he has just and probable cause to believe and does believe, that the intoxicating liquor is now unlawfully manufactured, kept for sale, sold, used, given away and disposed of, in violation of Title II of the *Nation* Prohibition Act, at and within those certain premises, buildings, cellars, sub-cellars, basements, rooms, outbuildings, closets, safes, desks, drawers, containers, trunks and other receptacles, in connection therewith, in that certain

room, place or building more particularly described as:

A ranch with small building used for residence, located about 5 miles in a westerly direction from the town of Silver Bow, Montana.

That the following are the reasons for this applicant's belief: that he has been heretofore informed, that intoxicating liquor is unlawfully manufactured, kept for sale, sold, used, given away or disposed of, by the defendant, Paul Fall, and other persons, in violation of the laws of the United States of America, in and upon said premises, and that particularly were the laws so violated on the 22d day of September, A. D. 1928, as well as at this time.

That the applicant has procured an affidavit from one James J. Maloney, setting forth that on the above date, he, the said James J. Maloney, was within said premises and purchased one pint of moonshine whiskey from Paul Fall for which he paid the sum of \$5.00.

That said affidavit is herewith submitted to the United States Commissioner, and made a part of this application, as a basis for the issuance of a search-warrant.

That the persons occupying the said premises were and are using the same in violation of Title II of the National Prohibition Act, as aforesaid, and the said property was then and now is, upon the said premises to be searched and that all of said property is located within the District of Montana.

Wherefore, this applicant prays that a search-warrant be issued according to law, and the said warrant be directed to the Commissioner of Prohibition and to any administrator, assistant administrator, deputy administrator or federal prohibition agent or officer, and to any other civil officer of the United States duly authorized to enforce or assist in enforcing any laws of the United States, or any or either of them, commanding that they or either of them, make diligent search of the premises herein described, in accordance with law.

BEN HOLTER.

(Applicant.)

Subscribed and sworn to before me this 25th day of Oct., A. D. 1928.

L. M. VAN ETTEN,

United States Commissioner for the State of
 —————. [37]

United States of America,
 District of Montana,—ss.

AFFIDAVIT FOR SEARCH-WARRANT.

James J. Maloney, being first duly sworn, deposes and says that he is acquainted with one Paul Fall, whose other and true name is to this affiant unknown, but who is the person who is hereinafter referred to as Paul Fall and who was on the 22d day of September, 1928 in charge of that certain room, place or building more particularly described as a ranch with a small building used for a residence, located about 5 miles in a westerly direction, from the town of Silver Bow, State of Montana.

That on the above-mentioned date this affiant visited the said place and purchased of the said Paul Fall a pint bottle of moonshine whiskey; and for which the said Paul Fall was paid the sum of \$5.00.

That the said Paul Fall and other persons, to this affiant unknown, were keeping stored in and about said premises a quantity of intoxicating liquor which said intoxicating liquor was kept possessed and sold in and about said place by them in violation of the laws of the United States of America and particularly Title II of the National Prohibition Act.

That this affiant knows the reputation of the said Paul Fall and of the place above described, and knows that he bears the reputation of being a person who keeps for sale and sells intoxicating liquors unlawfully and that said place bears reputation of being a place where intoxicating liquors are unlawfully sold.

That this affiant knows of his own knowledge that the said property so unlawfully possessed, kept, sold and used, was then on said premises and is positive that the same is still kept, possessed, sold and used thereon.

(Signed) JAMES J. MALONEY.

Subscribed and sworn to before me this 27th day of September, A. D. 1928.

Here make full statement of facts.

[Seal]

J. H. BRASS,

Dist. of Montana U. S. Commissioner. [38]

Before L. M. VAN ETTEN, United States Commissioner for the District of Montana.

United States of America,
District of Montana,—ss.

SEARCH-WARRANT.

The President of the United States of America, to the Commissioner of Prohibition and to Any Administrator, Assistant Administrator, Deputy Administrator or Federal Prohibition Agent or Officer, and to Any Other Civil Officer of the United States Duly Authorized to Enforce or Assist in Enforcing Any Laws of the United States, or Any or Either of Them, GREETINGS:

WHEREAS, I, L. M. Van Etten, a United States Commissioner for the District of Montana, have examined on oath Ben Holter, a duly appointed and qualified federal prohibition agent, applicant herein, and have examined the affidavit of James J. Maloney, produced by said applicant and filed by him with me in this case, and it appearing therefrom that certain intoxicating liquors fit for use as a beverage, was and is being kept for sale, sold, exchanged, used and disposed of, and that certain distilling, brewing, or wine making utensils and apparatus, mash and other materials designed and intended for use in the manufacture of intoxicating liquor, have been and are now being kept, possessed, used and employed in that certain place, room or building more particularly described as:

A ranch with small building used for residence, located about 5 miles in a westerly direction from the town of Silver Bow, Montana.

WHEREAS, the particular facts upon which this warrant is issued and probable cause is found by me to exist are as follows, to wit:

That the application of Ben Holter, Federal Prohibition Agent, and the affidavit of James J. Maloney, produced by him and filed herein, set forth that the said James J. Maloney, on or about the 22d day of Sept., 1928.

Was within said premises and purchased one pint of moonshine whiskey from Paul Fall for which he paid the sum of \$5.00.

And that a quantity of intoxicating liquor was and is being kept, possessed, stored, sold and used in and upon said premises in violation of Title II of the National Prohibition Act.

That the said Paul Fall bears the reputation of being a person who keeps for sale and sells and manufactures, intoxicating liquor, and the premises hereinabove described, bear the reputation of being a place where intoxicating liquors are kept for sale and sold and manufactured in violation of the laws of the United States of America.

And whereas, I, the undersigned, do find that there is probable cause to believe that the statements set forth in the said application and affidavits for the warrant are true and sufficient, and that intoxicating liquors are manufactured, kept for sale and sold in said premises or on the person of said keeper or other persons in said premises.

Now, therefore, you are hereby commanded in the name of the President of the United States, to enter said premises in the daytime, with necessary and proper assistance and there diligently search for said intoxicating liquors, vessels, bottles and containers of said liquors, whether in the said premises or [39] on the person of the said keeper or other persons present, and all utensils, apparatus and materials for the manufacture of intoxicating liquors, or for the storing and possessing of the same, and all evidence of crime, of manufacturing, purchasing, possessing, selling or disposing of intoxicating liquors, as may be therein found in the form of books, recipes for manufacturing or compounding intoxicating liquors, receipts, bills of lading, notes, checks, liquor labels, letters and other such evidences, whether found in the premises or on said persons and to report any act concerning same, as required by law of you, and to seize, secure and bring the said property with a return of your actions thereunder to the undersigned.

You are further *comanded* that in the event you seize or take said liquors or other property or evidence under this warrant, to give a copy of this warrant together with a receipt for each and everything so seized, itemized in detail as nearly as may be, to the person from whom it is taken by you or in whose possession it is found or in case no person is present to leave a copy of this warrant with a receipt as aforesaid, in the place from which the said property is taken, and you are commanded to execute and return to the undersigned

this warrant with your return thereof and inventory of all property taken, duly made and verified by you within ten days from date hereof.

Given under my hand and seal at my office this 25 day of October, A. D. 1928.

L. M. VAN ETTEN,

United States Commissioner for the District of
Montana.

RETURN.

United States of America,
District of Montana,—ss.

I hereby certify that I received the within warrant on the 25th day of October, A. D. 1928, and that by virtue of said warrant and authority contained herein I did this 25th day of October, 1928, search the premises described therein and found and seized the following described liquors, properties and utensils, possessed and unlawfully used for the manufacture, sale and possession of intoxicating liquor, to wit:

5 gal. in residence, whiskey.

8 gal. at still 300 yards north of house, whiskey.

2 stills, 1 45-gal. and 1 60-gal.

600 gal. mash.

5 kegs.

1 burner, pressure tank and utensils complete.

(a) I hereby certify that I then and there served said warrant by given notice of the contents thereof and gave a copy of the within warrant together with a complete inventory of the property seized to Paul

Fall who was present and in possession of the property seized.

(b) I hereby certify that in the absence of anyone claiming ownership or possession of the articles seized, I left at the place of seizure, a copy of the within warrant, together with an itemized receipt for the property taken.

I, H. Donald Dibble, the officer by whom this warrant was executed, do swear that the above statement and inventory contains a detailed and true account of all property seized and acts done by me under authority of said warrant.

H. DONALD DIBBLE,

Subscribed and sworn to before me this 7th day of November A. D. 1928. [40]

L. M. VAN ETTEN,
U. S. Commissioner.

P. S. You will use paragraphs marked (a) or (b) in keeping with the facts and cancel the other paragraph.

Filed November 7, 1928.

L. M. VAN ETTEN,
U. S. Commissioner.

Filed Nov. 14, 1928. [41]

At the conclusion of the said testimony, the cause was argued and submitted to the Court for its decision and the said Court thereafter made an order denying said motion to quash, etc., held the evidence competent, but without that secured in the house, that from the dugout sufficed to prove defendant guilty as charged, and duly sentenced him accord-

ingly; to which order the plaintiff duly accepted and made and entered herein judgment in writing whereby the defendant was found guilty upon all of the said five counts of the said information.

The above and foregoing constitutes all of the evidence and no other proceedings were had or taken herein nor any other evidence heard than is above set out.

That on the fourth day of January, 1929, on motion of the defendant herein IT WAS ORDERED that the time allowed to the defendant in which to prepare, serve, and file a bill of exceptions herein be extended for a period of ten days in addition to that allowed by law and under the rules of this Court therefor, and within the time so allowed by the rules of the above-entitled court and within the time allowed by said order, the defendant presents the foregoing as his bill of exceptions to the ruling as made on the motion of the defendant to quash search-warrant and to suppress certain evidence herein, and to the rulings made and proceedings had at the trial of the above-entitled action.

Dated this 6th day of January, 1929.

W. N. WAUGH.

JOHN A. SHELTON,

Attorneys for the Defendant.

Services of the foregoing bill of exceptions and receipt of copy admitted this 14th day of January, 1929.

WELLINGTON D. RANKIN,

United States District Attorney. [42]

STIPULATION RE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND AGREED that the above and foregoing bill of exceptions is true and correct and that the same may be forthwith signed, allowed as correct, and ordered filed, and right to propose amendments to the said bill of exceptions is waived by the plaintiff herein.

Dated this 6th day of January, 1929.

_____,
 Attorney for Plaintiff.
 W. N. WAUGH,
 JOHN A. SHELTON,
 Attorneys for Defendant.

CERTIFICATE OF JUDGE TO BILL OF EXCEPTIONS.

United States of America,
 State of Montana,—ss.

I, George M. Bourquin, Judge of the above-entitled court, do hereby certify that the above and foregoing bill of exceptions is true and correct and the same is allowed, settled as correct and ordered filed.

Dated this 5th day of February, 1929.

BOURQUIN,
 Judge.

Filed Feb. 5, 1929. [43]

THEREAFTER, on February 5th, 1929, praecipe for transcript on appeal was duly filed herein, being in the words and figures as follows, to wit: [44]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT ON APPEAL.

To the Clerk of the United States District Court for the District of Montana:

Please prepare a transcript on appeal to the United States *Circuit of Appeals* from a judgment of conviction made and entered in the said United States District Court on the 28th day of December, 1928, in the above-entitled case, which shall include the following:

- (1) Information filed herein November 26th, 1928.
- (2) Defendant's bill of exceptions filed herein February 6th, 1929.
- (3) Judgment of conviction made and filed herein December 28th, 1928.
- (4) Assignment of errors filed herein January 28th, 1929.
- (5) Notice of appeal filed herein January 28th, 1929.
- (6) Bond on appeal filed herein January 30th, 1929.
- (7) Citation filed herein January 30th, 1929.

W. N. WAUGH,
Attorney for Defendant.

Filed Feb. 5, 1929. [45]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
District of Montana,—ss.

I, C. R. Garlow, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 46 pages, numbered consecutively from 1 to 46, inclusive, is a true and correct transcript of the record and proceedings had in the within entitled cause and of the whole thereof required, by praecipe filed, to be incorporated in said transcript, as appears from the original records and files of said Court and cause in my custody as such Clerk; and I do further certify and return that I have annexed to said transcript and included within said pages the original citation issued in said cause.

I further certify that the costs of said transcript amount to the sum of Five and 90/100 Dollars, (\$5.90), and have been paid by the appellants.

WITNESS my hand and the seal of said court at Butte, Montana, this 21st day of February, A. D. 1929.

[Seal]

C. R. GARLOW,
Clerk as Aforesaid.
By L. R. Polglase,
Deputy Clerk. [46]

[Endorsed]: No. 5742. United States Circuit Court of Appeals for the Ninth Circuit. Paul Fall, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Montana.

Filed February 27, 1929.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

